

MEMORANDUM

DATE: November 12, 2014

TO: Amy Hammons, Texas Historical Commission

FROM: David B. Brooks

SUBJECT: County Historical Commissions

Last month, you asked me to comment on several issues confronting your agency regarding county historical commissions, which are governed by Chapter 318 of the Local Government Code. This law originated in 1963 with authority given to the county judge to appoint a "County Historical Survey Committee," composed of seven county residents. Its function was to collect data of historical property, both real and personal, and make recommendations to the commissioners court. In 1971, the law was amended to give the appointment authority to the entire commissioners court rather than the county judge. The 1971 amendment also granted authority to the historical committee to "operate and manage" a county historical museum.

In 1975, the appointment process was amended again to remove authority for the county judge to recommend to the commissioners court certain appointees. Meetings and annual reports were also required. (The amendment also dropped specific reference to "battlefields" as historical sites.) The 1975 amendment also granted more express authority for a county to spend money on historical markers, written county histories, and the like. (The express authority to spend money on historical markers, and purchasing historical collections had been adopted by a separate 1963 law, which was consolidated in 1975.) The amendment also changed the name of the committee to "County Historical Commission."

The law was further amended in 2001 to recognize the application of the Open Meetings Act, include archaeological sites, and further involve the state Historical Commission. It further required a local historical commission to meet four times a year, rather than annually. Express authority for grants from the state was also part of the 2001 legislation.

You have asked several questions regarding the status of non-voting appointees who are members of a county historical commission serving in an ex officio capacity or otherwise. Chapter 318 does not provide for the appointment of non-voting members or persons serving in an ex officio capacity. Any such appointments made by a county are without any legal effect. Section 318.003 merely requires the appointment of at least seven county residents with certain general qualifications, who serve two-year terms of office. Any non-voting appointees, or honorary appointees, nevertheless made would not be included in determining a quorum. You had referenced attorney general opinion JC-

580, which concerned non-voting members for an appraisal district board. A non-voting member on this board is expressly authorized by the Tax Code. The tax assessor can serve as an ex officio “non-voting director,” pursuant to Tax Code § 6.03. There is no comparable provision in Local Government Code Chapter 318 for county historical commissions. Other examples of express statutory authority for the appointment of “ex officio, non-voting” members of a body include the state Real Estate Research Advisory Committee, Education Code § 86.52(d), advisory boards for adult care grant programs, Education Code § 136.004(b), interstate compacts for juveniles, Family Code § 60.010, and regional planning commissions, Local Government Code § 391.006, among many others.

You have asked whether a county commission can participate in fundraising activities. A commission is an agency of the county and is governed by the same laws applicable to a county regarding funds. The county may pay any expenses of a local commission. Section 318.009. The county may “appropriate funds” for designated purposes under this same section. State grants from your agency are approved by the commissioners court and made available to the local commission. This expressly includes the authority to prepare and disseminate “by sale or otherwise, a history of the county.” Any revenue received would be placed in the county treasury at the county depository, as with other general county revenue. Counties with a population of 2.2 million may charge an admission fee to a “county-operated museum, historical site, historical building, or other similar building or site.” Local Government Code § 316.021. Revenue from this fund is designated to historical purposes. These same counties may enter into contracts with nonprofit organizations for management and operation of historical places. Local Government Code § 316.022. Any fundraising activities of a private nature is not regulated by the Local Government Code, Chapter 318. Any funds raised can be accepted by the county as a gift for historical purposes. Furthermore, any grants of a general nature to the county may be accepted by the commissioners court, rather than by the local commission. As to money “raised in the name” of a local county historical commission, this could only be interpreted as a gift made to the county that may be made and accepted pursuant to Local Government Code § 81.032. The county auditor is the local official who would differentiate between a private fundraising money and county revenue in the form of gifts.

Similarly, a county historical commission, as an agency of the county, cannot maintain a private bank account. The money is spent and received as other county budget appropriations and county revenue.

The county, through the commissioners court, and not the historical commission, is responsible for appropriating money for county historical purposes including the purchases of objects and the like, pursuant to § 318.009.

As with ex officio nonvoting members, there is no provision in Chapter 318 for a commission to adopt bylaws. Again, there are many examples in the statutes where the legislature has so authorized for a particular public entity. A county ethics commission,

for example, may “adopt bylaws.” Local Government Code § 161.101. Civic center authorities may also adopt bylaws. § 281.026.

You have asked whether there are “official directives” outside of Local Government Code Chapter 318 that may explain the responsibility of a commission as “a subdivision of county government.” There is no simple answer to that question. This includes federal and state law regarding liability under civil rights laws, the Tort Claims Act, the bidding laws, and many other matters, including the Open Meetings Act and Public Information Act. The county auditor would be the one person in county government who may give broad, cogent advice.

You have asked whether a county official may be appointed as a member of a commission. There is no such general prohibition. Under certain circumstances the county judge himself may serve as an interim chair, for example. There would be no conflict of interest prohibition or dual officeholding bar by appointing a county clerk or county treasurer to the historical commission for a county.

A county commission is an independent agency and cannot be placed under the supervision of another county office, whether elected or appointed. The historical commission is required to make reports to the commissioners court and other than this cannot be placed under the oversight of another county official.

As to your final question, there is no express authority to collect “dues” although any such effort would be construed to be a gift to the county. A county historical commission does not have members other than those appointed to the governing board.

Please let me know if you need a clarification or any expansion of my answers to your questions.